Advisory Committee on Qualifications for Health Care Translators and Interpreters Initial Report 2010

Recommendations for the 2010 Qualifications for Health Care Translators and Interpreters Legislative Charge and 82nd Legislature, Regular Session, 2011

December 16, 2010

DISCLAIMER

This *Advisory Committee on Qualifications for Health Care Translators and Interpreters (Committee) Initial Report 2010* reflects the views and opinions of a majority of the Committee's membership. The Committee, for purposes of this report, refers only to those members appointed to the Committee by the Health and Human Services Commission's (HHSC) Executive Commissioner and does not include the non-voting representatives from each Texas Health and Human Services (HHS) agency. Unless otherwise noted, the views and opinions expressed in these recommendations are those of the appointed members to the advisory committee. HHSC only provides staff support as directed by Health and Human Services Circular C-022.

This report and its recommendations for the Committee's legislative charge per H.B. 233, 81st Legislature, Regular Session, 2009, reflect the positions of a majority of the members of the Committee. There are many different perspectives and policy concerns represented by the Committee's membership and not all statements made in this report reflect each member's official position. Contents of this report were discussed by the Committee and every member voted on the recommendations independently. Recommendations were passed by unanimous vote and there were no nay votes and no abstentions.

ADVISORY COMMITTEE ON QUALIFICATIONS FOR HEALTH CARE TRANSLATORS AND INTERPRETERS LEGISLATION RECOMMENDATIONS

The non-agency stakeholders of the Advisory Committee on Qualifications for Health Care Translators and Interpreters (Committee) focused on increasing the quality of and access to health care by improving the quality of communication between health care providers and consumers with limited English proficiency (LEP) and consumers who are deaf or hard of hearing. The Committee respectfully submits these recommendations, which were adopted by unanimous vote.

Recommendations for Interpreters of Foreign Languages and Foreign Signed Languages

Recommendation #1
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to prohibit the practice of requiring patients to bring their own interpreter.

Rationale for Recommendation #1
This recommendation addresses one of the most clinically inappropriate practices of health care providers and institutions related to language access. It prohibits the practice of asking patients to bring their own interpreter to medical appointments. According to federal guidance regarding discrimination against LEP individuals, health care providers or institutions who receive federal funds may not require LEP individuals to use family members or friends as interpreters.[1]

Recommendation #2
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to limit the use of uncertified or unqualified individuals including but not limited to friends, family members, associates, and others to assist with communication to medical emergency situations—both physical and mental health emergencies—in which an interpreter not associated with the patient is not available by any other means, including but not limited to in-house, contracted, and remote interpreters.

In routine situations a provider will use a certified or qualified interpreter not associated with the patient at no cost to the patient. The health care facility staff will inform the patient—in the patient's preferred language—that a qualified interpreter will be provided at no cost to the patient. However, the patient may bring another person to assist with communication.

[1] HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons. Federal Register: August 8, 2003 (Volume 68, Number 153)

Definitions:
Remote interpreters shall be defined as certified or qualified interpreters who make their services available via communications technologies, such as telephonic interpreting and videoconferencing systems.

Rationale for Recommendation #2
The recommendation is a first, essential step toward increasing the quality of, and access to, competent medical interpreters. While certification is not currently required for foreign language interpreters in a medical setting, this recommendation in no way limits the possibilities of requiring medical specialty certification at a future date.

According to the federal Department of Health and Human Services, "... Family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such non-professional interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter."

"…Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English…."[2]

Recommendation #3
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to require successful completion of HHS agency approved training on health care interpreter ethics and standards of practice for any individual in the state of Texas who provides interpreting services in the course of his or her professional duties in a professional health care setting.

An HHS agency shall have authority to establish, by rule, the minimum standards for approved training and interpreter qualifications.

Rationale for recommendation #3
This recommendation ensures that medical interpreters in the state of Texas have a comprehensive knowledge of the ethics and standards of practice necessary to ensure the rights of patients—including confidentiality, impartiality, efficacy of communication, and the ability of patients to make decisions about their own medical care, all of which have been specified by the federal Department of Health and Human Services as essential components of the competence of interpreters.[3] In passing this recommendation, the Committee assumes that training will be approved by either a state health agency or a professional health care or interpreters' association.

[2] HHS Guidance
[3] HHS Guidance, Section VI.A.

The Committee recommends for this purpose the National Code of Ethics and Standards of Practice developed by the National Council on Interpreting in Health Care (NCIHC). By granting rulemaking authority to an HHS agency, the need to seek further legislation on this issue is averted.

If an HHS agency is granted rule-making authority to establish specific qualifications for Healthcare Translators and Interpreters, the Committee intends to recommend the following interpreter qualifications to an HHS agency:

- Age 18
- High School Education
- Fluency in English and a Language Other Than English
- Experience as a Translator or Interpreter
- Training on:
  - Interpreting Skills
    - Consecutive Interpreting
    - Sight Translation
    - Protocols (managing the session)
  - Code of Ethics for Health Care Interpreters
  - Standards of Practice for Health Care Interpreters
  - Roles of the Health Care Interpreter
  - Cultural Awareness
  - Legislation and Regulations (Americans with Disabilities Act (ADA), Section 504 of Rehabilitation Act, Title VI of Civil Rights Act, Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), National Standards on Culturally and Linguistically Appropriate Services (CLAS))
  - General Medical Knowledge
    - Anatomical Terms for Major Body Systems
    - Medical Tests and Diagnostics
    - Common Specialties and Medications (including physical and mental health)
    - Acronyms and Abbreviations
    - Routine Medical Equipment
    - Infection Control
    - Onsite Mentoring

Recommendation #4
Recommend that a registry of healthcare interpreters be established through a non-profit organization in which interpreters who have successfully completed an HHS agency approved training may register.

Rationale for Recommendation #4

Health care providers who try to comply with language access requirements often have difficulty finding interpreters when needed, especially for languages of limited diffusion. In testimony before the Committee, stakeholders expressed strong support for a registry where they could easily find the interpreters they need. By relying on a nonprofit professional organization to host the registry, the State will avoid the cost of doing this and the cost of registering will be very minimal. This approach is modeled after the longstanding Registry of Interpreters for the Deaf. Registration will be voluntary, as a first step toward identifying and communicating with individuals who provide interpreting services in health care as stakeholders in the process of establishing qualifications.

Recommendations for American Sign Language Interpreters

Recommendation #1
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to prohibit the practice of requiring patients to bring their own interpreter.

Rationale for Recommendation #1
This recommendation addresses one of the most clinically inappropriate practices of health care providers and institutions related to language access. It prohibits the practice of asking patients to bring their own interpreter to medical appointments. According to federal guidance regarding language and communication discrimination, health care providers or institutions who receive federal funds may not require the use of family members or friends as interpreters.[4]

Recommendation #2
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to limit the use of uncertified and unqualified individuals including but not limited to friends, family members, associates, and others to assist with communication to medical emergency situations—both physical and mental health emergencies—in which an interpreter not associated with the patient is not available by any other means, including but not limited to in-house, contracted, and remote interpreters.

In routine situations a provider will use a certified and qualified interpreter not associated with the patient at no cost to the patient. The health care facility staff will inform the patient—in the patient's preferred language—that a qualified interpreter will be provided at no cost to the patient. However, the patient may bring another person to assist with communication.

Definitions:
Remote interpreters shall be defined as certified and qualified interpreters who make their services available via communications technologies, such as telephonic interpreting and videoconferencing systems.

Rationale for Recommendation #2
The recommendation is a first, essential step toward increasing the quality of, and access to, competent medical interpreters and in no way limits the possibilities of requiring medical specialty certification at a future date.

According to ADA Title II Technical Assistance Manual, "... In many situations, requiring a friend or family member to interpret may not be appropriate, because his or her presence at the transaction may violate the individual's right to confidentiality, or because the friend or family member may have an interest in the transaction that is different from that of the individual involved. The obligation to provide 'impartial' interpreting services requires that, upon request, the public entity provide an interpreter who does not have a personal relationship to the individual with a disability...."

[4] HHS Guidance

"Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words."[5]

According to the newly adopted rules for Title III of the ADA covering public accommodations, "In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member may be acceptable in some situations, however, in some circumstances a family member or friend may not be qualified to render the necessary interpretation for personal and confidential reasons that may adversely affect the ability to interpret 'effectively, accurately, and impartially'".[6]

Recommendation #3
Recommend an amendment to the applicable statutes, including the Texas Health and Safety Code, to require successful completion of HHS agency approved training on health care interpreter ethics and standards of practice for any individual in the state of Texas who provides interpreting services in the course of his or her professional duties in a professional health care setting.

An HHS agency shall have authority to establish, by rule, the minimum standards for approved training and interpreter qualifications.

Rationale for Recommendation #3
This recommendation ensures that medical interpreters in the state of Texas have a comprehensive knowledge of the ethics and standards of practice necessary to ensure the rights of patients—including confidentiality, impartiality, efficacy of communication, and the ability of patients to make decisions about their own medical care, all of which have been specified by the federal Department of Health and Human Services as essential components of the competence of interpreters. Additionally, this recommendation ensures effective communication with deaf and hard-of-hearing individuals in any health care setting. In passing this recommendation, the Committee assumes that training will be approved by either a state health agency or a professional health care or interpreters' association. The Committee recommends for this purpose the National Code of Ethics and Standards of Practice developed by the NCIHC. By granting rule-making authority to an HHS agency, the need to seek further legislation on this issue is averted.

If an HHS agency is granted rule-making authority to establish specific qualifications for Health Care Translators and Interpreters, the Committee intends to recommend the following interpreter qualifications to an HHS agency:

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[5] ADA Title II Technical Assistance Manual Covering State and Local Government Programs and Services, Section II-7.

[6] Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. Appendix B to Part 36 CFR, Revised July 1, 2009

- Board of Evaluation of Interpreters (BEI) Certification
- Experience as a Translator or Interpreter
- Training on:
  - Interpreting Skills
    - Consecutive and Simultaneous Interpreting
    - Sight Translation
    - Protocols (managing the session)
  - Code of Ethics for Health Care Interpreters
  - Standards of Practice for Health Care Interpreters
  - Roles of the Health Care Interpreter
  - Cultural Awareness
  - Legislation and Regulations (ADA, Section 504 of Rehabilitation Act, Title VI of Civil Rights Act, HIPAA, HITECH, CLAS)
  - General Medical Knowledge
    - Anatomical Terms for Major Body Systems
    - Medical Tests and Diagnostics
    - Common Specialties and Medications (including physical and mental health)
    - Acronyms and Abbreviations
    - Routine Medical Equipment
    - Infection Control
    - Onsite Mentoring

Recommendation #4
Recommend that a registry of health care interpreters be established through a non-profit or government organization in which interpreters who have successfully completed an HHS agency approved training may register.

Rationale for Recommendation #4
Health care providers who try to comply with language access requirements often have difficulty finding interpreters when needed, especially for languages of limited diffusion. In testimony before the Committee, stakeholders expressed strong support for a registry where they could easily find the interpreters they need. By relying on a non-profit professional organization or established government agency to host the registry, the State will avoid the cost of doing this and the cost of registering will be very minimal. This approach is modeled after the longstanding Texas Board of Evaluation of Interpreters (BEI) and the Registry of Interpreters for the Deaf. Registration will be voluntary, as a first step toward identifying and communicating with individuals who provide interpreting services in health care as stakeholders in the process of establishing qualifications.

Appendix A

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